

### **REMARKS**

The cancellation of claims 77-81 and 106-107 is solely for purpose of saving additional claim fees.

There is absolutely nothing vague about claim 49. The term "ameliorate" has its definitive meaning "to make or become better; improve." (Webster's New World Dictionary, Second College Edition, 1982) There is nothing uncertain about the meaning of making medical problems better or improving them. Where bleeding is a problem, there is nothing indefinite about how the problem gets improved or made better. It is clear that both decreasing and ceasing the bleeding are encompassed. As for the nature of the plural problems questioned by the examiner, this also poses no indefiniteness to one of skill in the art. The specification makes clear that breakthrough bleeding is a typical such problem. See, e.g., page 3, lines 27-31, which also contain exemplary support for the new claims. Progestin in contraception is conventional, as is the field's knowledge of the bleeding problems it produces. Note, for example, the conflicting USP 5,622,943 which also refers to and utilizes in its claims "uterine bleeding" associated with progestin preparations. There is no indefiniteness.

The examiner raises a double patenting issue with respect to USP 5,622,943, alleging lack of patentable distinctness "from each other because the instant claim encompasses the patented claim." Thus, the examiner has found that the current claim renders the patented claim obvious. It is clear that there also is no patentable distinctness in the other direction because the patented claim, according to the examiner, falls within the scope of the current claim, thereby necessarily rendering it obvious. Thus, there is two way obviousness. Consequently, an interference with this patent is in order and should be declared for reasons of record.

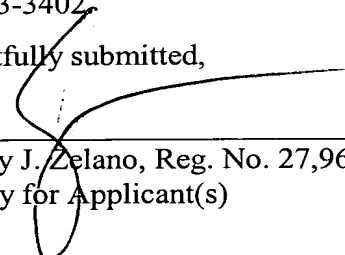
The last paragraph at the bottom of page 2 of the office action is not understood. Firstly, the inventors of this application (Chwalisz and Hodgen) are not identical with the inventorship of U.S. '943. The latter names as an inventor only Gary D. Hodgen. Secondly, the examiner indicates that "this statement," (presumably, applicant's statement of the facts that the inventorships are different and the assignees are different); somehow indicates that the inventions are different. The logic of this conclusion is not seen. It is applicant's position that because the assignees are different and the inventorships are different, yet patentably indistinct inventions are

claimed in this application and in U.S. '943, an interference is mandated under U.S. law.

Regarding the examiner's reference to authority for declaration of an interference where assignees are different, note 37 CFR § 41.206 stating that an APJ can decline to declare an interference where a patent and an application are commonly owned. This reflects the corollary that where there is not common ownership, and, as here, all other necessary requirements are met for declaration of an interference, the APJ cannot so decline.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



---

Anthony J. Zelano, Reg. No. 27,969  
Attorney for Applicant(s)

MILLEN, WHITE, ZELANO  
& BRANIGAN, P.C.  
Arlington Courthouse Plaza 1, Suite 1400  
2200 Clarendon Boulevard  
Arlington, Virginia 22201  
Telephone: (703) 243-6333  
Facsimile: (703) 243-6410

Attorney Docket No.: SCH-1309-C03

Date: April 27, 2005

AJZ:hlw K:\Sch\1309c3\REPLY april 05.doc